

**ASSEMBLY BILL**

**No. 516**

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**Introduced by Assembly Member Niello**

February 24, 2009

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An act to amend Section 4453 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 516, as introduced, Niello. Workers' compensation: temporary disability.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law provides certain methods for determining workers' compensation benefits payable to a worker or his or her dependents for purposes of temporary disability, permanent total disability, permanent partial disability, and in case of death. Existing law requires, in computing average annual earnings for the purposes of temporary disability indemnity and permanent total disability indemnity only, that the average weekly earnings be taken, for injuries occurring on or after January 1, 2006, at not less than \$189, nor more than \$1,260 or 1.5 times the state average weekly wage, whichever is greater, and, commencing January 1, 2007, and each January thereafter, requires that those limits be increased by an amount equal to the percentage increase in the state average weekly wage as compared to the prior year.

This bill would require, for injuries occurring on or after January 1, 2010, for temporary disability, that the benefit amounts payable to an injured worker be not less than an amount equal to the employee's

weekly earnings from all employers, nor more than \$1,260, or 1.5 times the state average wage, whichever is greater.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4453 of the Labor Code is amended to  
2 read:

3 4453. (a) In computing average annual earnings for the  
4 purposes of temporary disability indemnity and permanent total  
5 disability indemnity only, the average weekly earnings shall be  
6 taken at:

7 (1) Not less than one hundred twenty-six dollars (\$126) nor  
8 more than two hundred ninety-four dollars (\$294), for injuries  
9 occurring on or after January 1, 1983.

10 (2) Not less than one hundred sixty-eight dollars (\$168) nor  
11 more than three hundred thirty-six dollars (\$336), for injuries  
12 occurring on or after January 1, 1984.

13 (3) Not less than one hundred sixty-eight dollars (\$168) for  
14 permanent total disability, and, for temporary disability, not less  
15 than the lesser of one hundred sixty-eight dollars (\$168) or 1.5  
16 times the employee's average weekly earnings from all employers,  
17 but in no event less than one hundred forty-seven dollars (\$147),  
18 nor more than three hundred ninety-nine dollars (\$399), for injuries  
19 occurring on or after January 1, 1990.

20 (4) Not less than one hundred sixty-eight dollars (\$168) for  
21 permanent total disability, and for temporary disability, not less  
22 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
23 times the employee's average weekly earnings from all employers,  
24 nor more than five hundred four dollars (\$504), for injuries  
25 occurring on or after January 1, 1991.

26 (5) Not less than one hundred sixty-eight dollars (\$168) for  
27 permanent total disability, and for temporary disability, not less  
28 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
29 times the employee's average weekly earnings from all employers,  
30 nor more than six hundred nine dollars (\$609), for injuries  
31 occurring on or after July 1, 1994.

32 (6) Not less than one hundred sixty-eight dollars (\$168) for  
33 permanent total disability, and for temporary disability, not less

1 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
2 times the employee's average weekly earnings from all employers,  
3 nor more than six hundred seventy-two dollars (\$672), for injuries  
4 occurring on or after July 1, 1995.

5 (7) Not less than one hundred sixty-eight dollars (\$168) for  
6 permanent total disability, and for temporary disability, not less  
7 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
8 times the employee's average weekly earnings from all employers,  
9 nor more than seven hundred thirty-five dollars (\$735), for injuries  
10 occurring on or after July 1, 1996.

11 (8) Not less than one hundred eighty-nine dollars (\$189), nor  
12 more than nine hundred three dollars (\$903), for injuries occurring  
13 on or after January 1, 2003.

14 (9) Not less than one hundred eighty-nine dollars (\$189), nor  
15 more than one thousand ninety-two dollars (\$1,092), for injuries  
16 occurring on or after January 1, 2004.

17 (10) Not less than one hundred eighty-nine dollars (\$189), nor  
18 more than one thousand two hundred sixty dollars (\$1,260), for  
19 injuries occurring on or after January 1, 2005. For injuries  
20 occurring on or after January 1, 2006, average weekly earnings  
21 shall be taken at not less than one hundred eighty-nine dollars  
22 (\$189), nor more than one thousand two hundred sixty dollars  
23 (\$1,260) or 1.5 times the state average weekly wage, whichever  
24 is greater. Commencing on January 1, 2007, and each January 1  
25 thereafter, the limits specified in this paragraph shall be increased  
26 by an amount equal to the percentage increase in the state average  
27 weekly wage as compared to the prior year. For purposes of this  
28 paragraph, "state average weekly wage" means the average weekly  
29 wage paid by employers to employees covered by unemployment  
30 insurance as reported by the United States Department of Labor  
31 for California for the 12 months ending March 31 of the calendar  
32 year preceding the year in which the injury occurred.

33 *(11) For injuries occurring on or after January 1, 2010, for*  
34 *temporary disability, not less than an amount equal to the*  
35 *employee's average weekly earnings from all employers, nor more*  
36 *than one thousand two hundred sixty dollars (\$1,260) or 1.5 times*  
37 *the state average weekly wage, whichever is greater. Commencing*  
38 *on January 1, 2010, the maximum limit specified in this paragraph*  
39 *shall be increased by an amount equal to the percentage increase*  
40 *in the state average weekly wage as compared to the prior year.*

1 *For purposes of this paragraph, “state average weekly wage”*  
2 *means the average weekly wage paid by employers to employees*  
3 *covered by unemployment insurance as reported by the United*  
4 *States Department of Labor for California for the 12 months ending*  
5 *March 31 of the calendar year preceding the year in which the*  
6 *injury occurred.*

7 (b) In computing average annual earnings for purposes of  
8 permanent partial disability indemnity, except as provided in  
9 Section 4659, the average weekly earnings shall be taken at:

10 (1) Not less than seventy-five dollars (\$75), nor more than one  
11 hundred ninety-five dollars (\$195), for injuries occurring on or  
12 after January 1, 1983.

13 (2) Not less than one hundred five dollars (\$105), nor more than  
14 two hundred ten dollars (\$210), for injuries occurring on or after  
15 January 1, 1984.

16 (3) When the final adjusted permanent disability rating of the  
17 injured employee is 15 percent or greater, but not more than 24.75  
18 percent: (A) not less than one hundred five dollars (\$105), nor  
19 more than two hundred twenty-two dollars (\$222), for injuries  
20 occurring on or after July 1, 1994; (B) not less than one hundred  
21 five dollars (\$105), nor more than two hundred thirty-one dollars  
22 (\$231), for injuries occurring on or after July 1, 1995; (C) not less  
23 than one hundred five dollars (\$105), nor more than two hundred  
24 forty dollars (\$240), for injuries occurring on or after July 1, 1996.

25 (4) When the final adjusted permanent disability rating of the  
26 injured employee is 25 percent or greater, not less than one hundred  
27 five dollars (\$105), nor more than two hundred twenty-two dollars  
28 (\$222), for injuries occurring on or after January 1, 1991.

29 (5) When the final adjusted permanent disability rating of the  
30 injured employee is 25 percent or greater but not more than 69.75  
31 percent: (A) not less than one hundred five dollars (\$105), nor  
32 more than two hundred thirty-seven dollars (\$237), for injuries  
33 occurring on or after July 1, 1994; (B) not less than one hundred  
34 five dollars (\$105), nor more than two hundred forty-six dollars  
35 (\$246), for injuries occurring on or after July 1, 1995; and (C) not  
36 less than one hundred five dollars (\$105), nor more than two  
37 hundred fifty-five dollars (\$255), for injuries occurring on or after  
38 July 1, 1996.

39 (6) When the final adjusted permanent disability rating of the  
40 injured employee is less than 70 percent: (A) not less than one

1 hundred fifty dollars (\$150), nor more than two hundred  
 2 seventy-seven dollars and fifty cents (\$277.50), for injuries  
 3 occurring on or after January 1, 2003; (B) not less than one hundred  
 4 fifty-seven dollars and fifty cents (\$157.50), nor more than three  
 5 hundred dollars (\$300), for injuries occurring on or after January  
 6 1, 2004; (C) not less than one hundred fifty-seven dollars and fifty  
 7 cents (\$157.50), nor more than three hundred thirty dollars (\$330),  
 8 for injuries occurring on or after January 1, 2005; and (D) not less  
 9 than one hundred ninety-five dollars (\$195), nor more than three  
 10 hundred forty-five dollars (\$345), for injuries occurring on or after  
 11 January 1, 2006.

12 (7) When the final adjusted permanent disability rating of the  
 13 injured employee is 70 percent or greater, but less than 100 percent:  
 14 (A) not less than one hundred five dollars (\$105), nor more than  
 15 two hundred fifty-two dollars (\$252), for injuries occurring on or  
 16 after July 1, 1994; (B) not less than one hundred five dollars (\$105),  
 17 nor more than two hundred ninety-seven dollars (\$297), for injuries  
 18 occurring on or after July 1, 1995; (C) not less than one hundred  
 19 five dollars (\$105), nor more than three hundred forty-five dollars  
 20 (\$345), for injuries occurring on or after July 1, 1996; (D) not less  
 21 than one hundred fifty dollars (\$150), nor more than three hundred  
 22 forty-five dollars (\$345), for injuries occurring on or after January  
 23 1, 2003; (E) not less than one hundred fifty-seven dollars and fifty  
 24 cents (\$157.50), nor more than three hundred seventy-five dollars  
 25 (\$375), for injuries occurring on or after January 1, 2004; (F) not  
 26 less than one hundred fifty-seven dollars and fifty cents (\$157.50),  
 27 nor more than four hundred five dollars (\$405), for injuries  
 28 occurring on or after January 1, 2005; and (G) not less than one  
 29 hundred ninety-five dollars (\$195), nor more than four hundred  
 30 five dollars (\$405), for injuries occurring on or after January 1,  
 31 2006.

32 (c) Between the limits specified in subdivisions (a) and (b), the  
 33 average weekly earnings, except as provided in Sections 4456 to  
 34 4459, shall be arrived at as follows:

35 (1) Where the employment is for 30 or more hours a week and  
 36 for five or more working days a week, the average weekly earnings  
 37 shall be the number of working days a week times the daily  
 38 earnings at the time of the injury.

39 (2) Where the employee is working for two or more employers  
 40 at or about the time of the injury, the average weekly earnings

1 shall be taken as the aggregate of these earnings from all  
2 employments computed in terms of one week; but the earnings  
3 from employments other than the employment in which the injury  
4 occurred shall not be taken at a higher rate than the hourly rate  
5 paid at the time of the injury.

6 (3) If the earnings are at an irregular rate, such as piecework,  
7 or on a commission basis, or are specified to be by week, month,  
8 or other period, then the average weekly earnings mentioned in  
9 subdivision (a) shall be taken as the actual weekly earnings  
10 averaged for this period of time, not exceeding one year, as may  
11 conveniently be taken to determine an average weekly rate of pay.

12 (4) Where the employment is for less than 30 hours per week,  
13 or where for any reason the foregoing methods of arriving at the  
14 average weekly earnings cannot reasonably and fairly be applied,  
15 the average weekly earnings shall be taken at 100 percent of the  
16 sum ~~which~~ *that* reasonably represents the average weekly earning  
17 capacity of the injured employee at the time of his or her injury,  
18 due consideration being given to his or her actual earnings from  
19 all sources and employments.

20 (d) Every computation made pursuant to this section beginning  
21 January 1, 1990, shall be made only with reference to temporary  
22 disability or the permanent disability resulting from an original  
23 injury sustained after January 1, 1990. However, all rights existing  
24 under this section on January 1, 1990, shall be continued in force.  
25 Except as provided in Section 4661.5, disability indemnity benefits  
26 shall be calculated according to the limits in this section in effect  
27 on the date of injury and shall remain in effect for the duration of  
28 any disability resulting from the injury.